FILED
UNITED STATES DISTRICT COURT
ALBUQUERQUE, NEW MEXICO
OCT 14 2005
MATTHEW J. DYKMAN
CLERK

UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF NEW MEXICO

LINDA BERGEY and JAMES R. BERGEY, SR.,

Plaintiffs,

vs. **NO.:CIV-05-0536MCA/WPL**

BOY SCOUTS OF AMERICA
d/b/a PHILMONT SCOUT RANCH BSA,

Defendant.

*

INITIAL PRETRIAL REPORT

Counsel have conferred and submit herewith the parties' consolidated Initial Pretrial Report.

APPEARANCES

Counsel are:

Patrick A. Casey, Esq. Patrick A. Casey, P.A. P.O. Box 2436 Santa Fe, NM 87504 (505) 982-3639 (505) 989-9181 (Fax)	For Plaintiffs
Alfred L. Green, Jr. Butt, Thornton & Baehr, P.C. P.O. Box 3170 Albuquerque, NM 87190-3170 (505) 884-0777 (505) 889-8870 (Fax)	For Defendant Boy Scouts of America d/b/a Philmont Scout Ranch BSA (Hereinafter "Philmont")

NATURE OF THE CASE

This is an action brought under 28 U.S.C. § 1332(a) based on the diversity of citizenship of the parties and the amount in controversy exceeds $75,000.00.

Plaintiffs allege the negligence of the Defendant's employees, agents or servants, Sarah

*COUNSEL: Please note new Pre-trial Order Deadlines.

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McGatha Shaddix, the Head Horseman, and Eric Perry and John Doe, the Wranglers by introducing a horse [the 'new green packhorse'] that was inexperienced for the trail ride activities of the Cavalcade and as a result of this negligence Linda Bergey was injured, as hereafter explained. Plaintiff also alleges a negligent failure to exercise care commensurate with the foreseeable risk of danger created by the erratic behavior demonstrated by the "new green packhorse" at least twice before the incident where it was being re-introduced to the group of novice Cavalcade riders. The negligence of the Defendant's employees, agents or servants, in summary of that alleged in the Complaint, and their failures are as follows:

A. To exercise reasonable care in maintaining and operating the trail ride in a safe and proper manner so as to prevent the foreseeable risk of harm to its guests;

B. To use a properly trained and experienced packhorse;

C. To recognize the propensity and dangerous disposition of the "new green packhorse" to disrupt the riders horses and cause injury to the novice participants, and thereby placing them at a greater risk of injury;

D. To remove and not use the "new green packhorse" in the shakedown preparations, thus not safely managing the Cavalcade for the novice participants;

E. To anticipate contingencies which would have required an emergency response or a change of plan in order to provide for the safety of the participants;

F. To have appropriate procedures and guidelines for use of properly trained and experienced packhorses in the equine activity for the safety of its novice guests participants, including Linda Bergey;

G. To provide experienced and adequately trained, certified and knowledgeable employees, agents or servants, with horsemanship experience as horse handlers to staff the horseback riding activities with novice and inexperienced riders.

H. To prohibit the use of "new green packhorse" in an activities where the participants were novice and inexperienced in horseback riding and handling or reacting to events beyond the control of the horse they were riding.

All acts are alleged to have been done by the employees, agents or servants of Defendant BSA were done within the scope of their duties or employment, contract, agency, or apparent agency and were authorized, participated in, or ratified by Defendant BSA or their administrators, managers, supervisors, officers or directors.

Plaintiff claims economic and non-economic damages resulting from the acts of negligence. Plaintiffs also claim breach of contract damages. Also claimed are loss of consortium damages.

AMENDMENTS TO PLEADINGS

Plaintiffs intend to file:

None known at this time.

Defendant, Boy Scouts of America d/b/a Philmont Scout Ranch intends to file:

At this time Defendant Boy Scouts of America does not anticipate filing additional amendments to its Answer. Depending on in formation developed during discovery, additional affirmative defenses may be pled.

STIPULATIONS

The parties hereto stipulate and agree that the United States District Court for the District of New Mexico has jurisdiction of the parties and the subject matter and that venue is properly laid in this District. The parties are willing to further stipulate to the following facts.

1. Boy Scouts of America is an organization chartered by U.S. Congress with its principal place of business in Texas.

2. Boy Scouts of America owns and operates Philmont located in Colfax County, New Mexico.

3. On July, 2002, Plaintiff, Linda Bergey, was a participant in a Cavalcade horseback trek at Philmont.

4. On July 7, 2002, Plaintiff, Linda Bergey, and other Cavalcade participants, who were novice riders, were to be provided initial training for the trek.

5. The group entered one of the corrals, referred to herein as Corral A, where they were given initial horsemanship lessons by the Defendants employees, agents or servants, Sarah McGatha Shaddix, the Head Horseman, and Eric Perry and John Doe, the Wranglers. The lessons included caring for, saddling and bridling the horses, which were then assigned to each member of the group. The riders than began the procedure of brushing, saddling, feeding and bridling their assigned horse.

6. The unidentified individuals in Plaintiff's Complaint were employees of BSA and Philmont, such individuals were acting within the course and scope of their employment.

The parties further stipulate and agree that the law governing this case is the Constitution and the law of the State of New Mexico.

PLAINTIFFS' CONTENTIONS

In July, 2002, Plaintiff, Linda Bergey, as a paying guest of the Defendant, came to Philmont

Scout Ranch to participate in an eight-day back-country horseback trail ride called a Cavalcade. On Sunday morning , July 7, 2002, Plaintiff, Linda Bergey, along with other guests gathered at the stables to prepare for their initial horseback trail ride training. All were inexperienced horseback riders.

The group entered one of the corrals, referred to herein as Corral A, where the initial horsemanship lessons were to be given by the Defendant's employees, agents or servants, Sarah McGatha Shaddix, the Head Horseman, Eric Perry and John Doe, the Wranglers. The lessons included caring for, saddling and bridling the horses, which were then assigned to each member of the group. The riders then began the procedure of brushing, saddling, feeding and bridling their assigned horses. During this time, Sarah McGatha Shaddix directed one of the Wranglers to bring a "new green packhorse" into the Corral A from where it was tied to the fence, next to where the group's horses were situated. The "new green packhorse" promptly spooked some of these horses causing them to set back up into yet another participant's horse, thereby creating an unsafe situation for all the riders. This was the first incident.

Sarah McGatha Shaddix then directed the Wrangler to remove the "new green packhorse" to the other end of Corral A from where the group was located. The "new green packhorse" was taken by a wrangler from where it had been tied and walked outside of the corral on a pathway between Corral A and another arena, Coral B, then brought back into Corral A through a gate on the far end of that arena.

Sarah McGatha Shaddix informed the group that they were short of horses and that this "new green packhorse" was a new horse, which had never been used before on the trail ride.

Upon re-entering Corral A, one of the Wranglers' attempted to tie the "new green packhorse" to a post but it broke away, charging at other horses that were tied up along the corral fence causing them to move toward the fence and away from the "new green packhorse". The "new green packhorse" stopped long enough for the Wranglers to catch it and put a yellow slicker over its head then they tied the "new green packhorse" to a post in Corral B adjacent to where the group was going to work with their assigned horses. This was the second incident.

The group was then instructed to ride their horses into the other arena, Corral B. They proceeded to do this, where they saw the "new green packhorse" tied to the post, to the left of the gate through which they entered. The group's horses exhibited nervousness and were whinnying loudly as they passed the" green pack horse."

While the group was given their equipment, a final check was done. At that time, one of the Wranglers took the "new green packhorse" from where it was tied to the post and began walking it around with the yellow rain slicker over its head, presumably in an attempt to calm it.

At about noon, after a saddle check, the group was lined up in Corral B behind Sarah McGatha Shaddix where they were to walk their horses in a circle. Sarah McGatha Shaddix told Eric Perry, Wrangler, that the group was ready and gave him orders to return the "new green packhorse" to the group of horses and riders.

Eric Perry, Wrangler, got the "new green packhorse" which promptly broke lose and was bucking and running full speed toward the group of riders with its head low and extended, its ears back and its mouth open showing his teeth. As the "new green packhorse" was running full speed across Corral B toward the group, the long pack cover on the horse was flapping in the wind as it ran directly in back of the circle towards two of the younger riders. This was the third incident which resulted in Linda Bergey's injury.

Linda Bergey was riding her horse in the group circle and was situated near the center of Corral B. The "new green packhorse" reached the back of the circle where the two younger riders were, it then turned and went directly at the other riders.

Linda Bergey's horse headed away from the "new green packhorse" in an attempt to get away but was unsuccessful. The "new green packhorse" ran into Linda's horse hitting it on the left flank with such force and violence that it caused her horse to lose its balance and fall over to the ground while she was still in the saddle. As a result, Linda Bergey's horse fell onto its right side, falling on her and driving her body and head into the corral ground.

Plaintiff alleges that the Defendant was under a duty to exercise care commensurate with the foreseeable risk of danger created by the erratic behavior demonstrated twice before the offending incident by the "new green packhorse" the morning of July 7, 2002. They had the duty to remove the offending horse from the string that would participate in the Cavalcade horseback trail ride. Because of the unruly, erratic and dangerous propensities and behavior of the horse, it was foreseeable that guests could be injured by the "new green packhorse" which had demonstrated its dangerous propensities toward the guest riders.

Plaintiff, Linda Bergey, proximately suffered personal injuries which are permanent and became responsible for medical expenses in excess of $237,000.00 and, as she is informed and believes, she will in the future incur medical, physical therapy, massage therapy, rehabilitative service expense for care and treatment of her injuries.

She lost wages and wage earning capacity on a permanent basis and lost her ability to fully perform household services in the past and in the future on a permanent basis.

Hedonic damages are also claimed flowing from the negligence as alleged.

Plaintiffs also claim breach of contract damages for non-conformance in which the Cavalcade back country trail ride was conducted which was not in conformance with the manner advertised. The damages here are for the lost value and the charges for the Cavalcade and the week of guest residency at Philmont Scout Ranch.

Also claimed are loss of consortium damages.

DEFENDANT, BOY SCOUTS OF AMERICA d/b/a PHILMONT SCOUT RANCH BSA'S CONTENTIONS

The accident in question occurred on the afternoon of July 7, 2002, at Philmont Scout Ranch. Plaintiff Linda Bergey was a participant in a Cavalcade horseback trek. This was the second day of the Cavalcade program, which involved training and orientation with the assigned horse to be ridden by the participant during the trek.

During the afternoon session, a packhorse, "Spinner," was to be introduced into the riding line with the mounted riders. Spinner had previously been a saddle horse and was being converted to a packhorse. For unknown reasons, Spinner became spooked and broke away from his wrangler, running directly at the group of mounted riders. The horse ridden by Linda Bergey, "Romeo," either spooked or was bumped by Spinner, causing Romeo to fall and Linda Bergey to be thrown from Romeo.

Defendant denies it or its employees were negligent, resulting in the alleged injuries to Plaintiffs but, rather the injuries, were the result of the inherent and unpredictable nature of equine animals. Defendant further asserts Defendant is not liable to Plaintiffs herein pursuant to §42-13-1, et seq., NMSA, known as the "Equine Liability Act."

Plaintiffs have alleged Defendant breached its contract with Plaintiffs herein in that Defendant charged a fee for the Cavalcade horseback trek, which could not be completed by Plaintiff Linda Bergey due to her injury. Defendant asserts that all fees for the Cavalcade horseback trek for Linda Bergey and her family were reimbursed by Defendant; therefore, there has been no breach of contract.

DISCOVERY

Plaintiffs intend to obtain the following discovery:

Depositions, oral or written, of any witness identified by Plaintiffs or Defendant; written interrogatories, requests for admissions and for production of documents or things, as well.

Defendant, Boy Scouts of America d/b/a Philmont Scout Ranch BSA, intends to obtain the following discovery:

1. Deposition of Plaintiff Linda Bergey
2. Deposition of Plaintiff James R. Bergey
3. Deposition of some members of the Cavalcade horseback trek who may have been witnesses to the alleged occurrence
4. Deposition of some treating physician of Plaintiff Linda Bergey
5. Deposition of any experts identified by Plaintiffs
6. Interrogatories and Requests for Production to Plaintiffs
7. Possibly Request for Admissions to Plaintiffs

In accordance with the Civil Justice Expense and Delay Reduction Plan adopted in compliance with the Civil Justice Reform Act, and pursuant to Title 28 U.S.C. § 473(a)(1), this case is assigned to a "**Standard**" track classification. Accordingly, the termination date for discovery is **January 15, 2006**, and discovery shall not be reopened, except by an order of the Court upon a showing of good cause. This deadline shall be construed to require that discovery be completed on or before the above date. Service of interrogatories or requests for production shall be considered timely only if the responses are due prior to the deadline. A notice to take deposition shall be considered timely only if the deposition takes place prior to the deadline. The pendency of dispositive motions shall not stay discovery. Motions relating to discovery (including, but not limited to, motions to compel and motions for protective order) shall be filed with the Court and served on opposing parties by **February 2, 2006**; responses shall be filed with the Court and served on opposing parties by **February 16, 2006**; the Notice of Completion and replies, if any, shall be filed with the Court and served on opposing parties by **March 2, 2006**. See D.N.M.LR-Civ. 7. This deadline shall not be construed to extend the twenty-day time limit in D.N.M.LR-Civ. 26.6.

Plaintiff shall identify to all parties in writing any expert witness to be used by Plaintiff at trial and to provide expert reports pursuant to Fed. R. Civ. P. 26(a)(2)(B) no later than **November 18, 2005**. All other parties shall identify in writing any expert witness to be used by such parties at trial and to provide expert reports pursuant to Fed. R. Civ. P. 26(a)(2)(B) no later than **December 16, 2005**.*

List all witnesses who, at this time, you think will either testify or be deposed, giving their name, title, address and a brief summary of their testimony.

PLAINTIFFS' WITNESSES *

1. Linda Bergey
   c/o Patrick A. Casey, Esq.
   1421 Luisa Street, Suite P
   Santa Fe, NM 87505

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

Plaintiff is expected to testify, to the extent she can recall, regarding her activities on the morning of the accident, as well as events leading up to the subject accident to the extent she calls or has memory for. Testimony may include her pain and suffering after the accident, physical impairment, disfigurement and mental anguish, loss of household services, limitation of activities and loss of enjoyment of life and quality of life, memory deficits, concentration and comprehensive difficulties, as well as lack of physical ability throughout the day, diminished earning capacity and loss of wage earning capacity in the future, past and future medical expenses, for non-medical expenses incurred or to be incurred, and as to damages for the nature, extent and duration of her injuries.

2. James R. Bergey, Sr.
c/o Patrick A. Casey, Esq.
1421 Luisa Street, Suite P
Santa Fe, NM 87505

Testimony concerning Linda Bergey's injuries and resulting treatment needed such as medical treatment, physical therapy, rehabilitative services, speech and language rehabilitative services, the impact this has had on Linda Bergey. Testimony regarding Ms. Bergey's pain and suffering after the accident, physical impairment, disfigurement and mental anguish, loss of household services, limitation of activities and loss of enjoyment of life and quality of life, diminished earning capacity and loss of wage earning capacity in the future, past and future medical expenses, for non-medical expenses incurred or to be incurred, and as to damages for the nature, extent and duration of her injuries. Mr. Bergey will also testify as to the resulting emotional impact this has had on both their lives.

Members in Cavalcade:

3. Steven J. Bergey
P.O. Box 234
Bishopville, MD 21813

4. James R. Bergey, Jr.
6213 South Point Road
Berlin, MD 21811-2631

5. Betsy Bergey
6213 South Point Road
Berlin, MD 21811-2631

6. Ryan Bergey
6213 South Point Road
Berlin, MD 21811-2631

7. Ross Andrew Bergey

6213 South Point Road
Berlin, MD 21811

8. Kathy Stephanos, R.N.
507 S Main Street
Berlin, MD 21811-1409

9. Rachel Stephanos
507 S Main Street
Berlin, M.D. 21811-1409

10. Jessica Stephanos
507 S Main Street
Berlin, MD 21811-1409

11. Butch Barrett, D.M.D.
6 Harbormist Circle
Berlin, MD 21811-1804

12. Heather Barrett
6 Harbormist Circle
Berlin, MD 21811-1804

13. Lindsey Parker
113 Cedar Avenue
Berlin, MD 21811

14. Chloe Mohimadoin
11726 Back Street
Whaleyville, MD 21872-2001

15. Chelsea Hulburd
10 Whaler Lane
Berlin, MD 21811-1609

16. Kathie Scanlon
107 Branch Street
Berlin, MD 21811-1301

These witnesses listed as "Members of the Cavalcade" are expected to give testimony concerning the events occurring at the Corral A and Corral B on July 7, 2003 and what they observed as to the "green pack horse" and what the Defendant's employees were or not doing that resulted in their negligence and their recollection of events leading up to and including the subject accident. Testimony to include their observation of the "new green packhorse's" erratic and wild behavior prior to the subject accident necessitating the need for one of the Wranglers to take the "new green packhorse out of Coral A, the Wrangler needing to place a yellow slicker over its head after it had spooked one of the participant's horse causing it to back up into another participant's horse. Testimony to include the Head Horseman's orders to return the "new green packhorse" into the group of horses and riders, and the "new green packhorse" breaking lose from the Wrangler where it charged at two younger riders in the group, then turning a circle and going at the other riders, and colliding into Linda Bergey's horse, causing her horse to lose its balance and fall to the ground with her still in the saddle. They will testify as to what occurred immediately after up until the time Linda Bergey was transported from the scene.

Medical Providers and EMT Personnel:

17. Mark Holcomb, M.D.
    Philmont Scout Ranch Medical Doctor
    c/o Alfred L. Green, Jr., Esq.
    Butt, Thornton & Baehr, P.C.
    P.O. Box 3170
    Albuquerque, NM 87190-3170
    (505) 884-0777

18. Doug Gadomski, REMT
19. Scott Lamont, RN
    Life Net (Lifeguard) – UNM Hospital
    1650 University NE, Suite 116
    Albuquerque, NM 87103
    (505) 272-2521

St. Vincent Hospital
455 St. Michael's Drive
Santa Fe, NM 87505
(505) 983-3361

20. Kendall Lee, M.D.
    Emergency Room Physician
    St. Vincent Hospital

21. Erich Marchand, M.D.
    Neurosurgery New Mexico
    531 Harkle Road, Suite D
    Santa Fe, NM 87505
    (505) 988-3233

22. David Hoverson, M.D.
Northern New Mexico Gastroenterology Associates
1691 Galisteo, Suite C
Santa Fe, NM 87505
(505) 983-5631

23. E. Dow Suhre, M.D.
Critical Care Management
465 St. Michael's Drive, Suite 105
Santa Fe, NM 87505
(505) 984-2600

24. Bruce A. Shaffer, M.D.
Ventilator Care and Management
1925 Aspen Drive, #802A
Santa Fe, NM 87505
(505) 473-2972

25. Charles A. Riley, M.D.
Ventilator Care and Management
465 St. Michael's Drive, Suite 104
Santa Fe, NM 87505
(505) 982-8338

26. Belyn Schwartz, M.D.
Rehabilitation Consultation and Transfer from New Mexico
1691 Galisteo, Suite E
Santa Fe, NM 87505
(505) 983-2233

Bryn Mawr Rehabilitation Hospital
P.O. Box 8500-8685
Philadelphia, PA 19178-8685
(610) 658-6060

27. David N. Horowitz, M.D. (Medical Associates of the Main Line)

(Internal Medicine – Primary Attending Physician)

28. David F. Long, M.D. (Rehabilitation Associates Main Line)
(Psychologist)

29. Kritis Dasgupta (Initial Evaluator, Hospital Care High)

30. Mary Anne Kirsch, M.S., CCC/SLP
(Speech Pathologist & Problems with Dysphagia)

31. Diane Kirschner
(Speech Pathologist)

32. Jen Brown
(Physical Therapist)

33. Rose Plumario, LSW
(Case Manager)

34. Jennifer Raimmondo, CRT
(Cognitive Re-mediation Therapy)

35. E. Murphy, Ph.D. (ML Behavioral Health Affiliates)
(Psychologist)

36. Lisa Michel, MS, ORT/L
(Occupational Therapist)

Chesapeake Rehabilitation Hospital
and Health South Chesapeake (Same Facility)
11029 Cathell Road
Berlin, MD 21811
(410) 957-3553

37. Gunnar W. Zorn, III, M.D. (Ability Rehabilitation Associates, P.A.)

38. Kristie Kim, M.D. (Ability Rehabilitation Associates, P.A.)
(Primary Attending Physicians)

39. Christine Kira, MS, CCC, SLP
(Speech Pathologist)

40. Laura Baines, ORT
(Occupational Therapist)

41. James J. Morgan, M.D. (Bird & Baumann, P.A.)
(Neurologist)

42. C. Peymale, BSW
(Social Worker)

43. Glenwood Brooks, Jr., Ph.D.
220 Tilghman Road
Salisbury, MD 21804
(410) 546-4600

Peninsula Orthopedic Associates
P.O. Box 2415
Salisbury, MD 21802-2415

44. Andrea Baier, M.D.

45. John H Hedger, M.D.

46. John J. Greco, M.D.

47. Jonathan Bell, M.D.
(Evaluation and Removal of PEG Tube)
314 Franklin Avenue
Berlin, MD 21811

48. John R. McLean, M.D. (McLean, Fry & Associates, P.A.)
(Cardiologist)
1315 South Division Street
Salisbury, MD 21804
(410) 749-4949

49. Elizabeth M. Burke, M.D. (Peninsula Dermatology Associates)
106 Milford St., #301
Salisbury, MD 21804
(410) 546-4431

50. Lawrence Barrett, II, D.D.S.
(Oral and Maxillofacial Surgery)
314 Franklin Avenue, Suite #401
Berlin, MD 21811
(410) 641-4710

51. M. Walter Lacuts, CMT
Pampered Touch Massage Therapy
1005 Hammond Road
Bishopville, MD 21813
(410) 352-5520

Testimony to include the evaluation of the trauma to the brain, and the actual results of the injury and the level of neurological injury, which includes, neuropsychological testing to establish a causal connection for Linda Bergey's traumatic brain injury, the level of sensation lost; the extent of motor function damage, the physical impairment resulting from head injury and the percentage of physical impairment resulting therefrom; level of assistance needed by Ms. Bergey in activities of daily living, past and/or future, need for attendant health care, past or future, level of attendant care needed, past or future and cost of attendant health care; the need for training Plaintiff in new modes of function to replace lost functions, past and future; psycho social changes; impaired cognitive changes; neuropsychological expenses, past and future; need for annual checkup and evaluation at a recognized head injury center and the cost of the annual checkups; need for psychological counseling, Plaintiff, family, past and future; whether Ms. Bergey will be able to work at a job for any length of time to earn money and the amount of hours per day/week; the life expectancy of Ms. Bergey due to her head injuries.

Testimony to include the level of orthopaedic injury sustained by Ms. Bergey, the level of voluntary function of the muscles which has been lost and will be lost in the future; the physical impairment from orthopaedic problems resulting from head injury and the percentage of physical impairment resulting therefrom; description of Ms. Bergey's disfigurement and the percentage of disfigurement; the level of assistance needed by Plaintiff in activities of daily living, past and future; the need and cost for attendant health care, past and future; need for future medical expenses past and future; need for home environmental modifications in the future; cost for needed home environmental modifications; need for medical, hospitalization and rehabilitation, past and future; need for physical therapy, past and future; need for occupational therapy, past and future; the need for training Ms. Bergey in new modes of function to replace lost function, past and future; whether Ms. Bergey will be able to work at any job for any length of time to earn money and the amount of hours per day/week from an orthopaedic standpoint.

Testimony to include the level of speech and language deficit Ms. Bergey has experienced resulting from her head injury and the percentage of impairment resulting therefrom; need for speech therapy, past and future; problems arising from swallowing difficulties, past and future; and costs for testing/monitoring related to swallowing difficulties, past and future.

52. Any witnesses listed by Defendant to this action.

**DEFENDANT, BOY SCOUTS OF AMERICA*
d/b/a PHILMONT SCOUT RANCH BSA'S WITNESSES**

Defendant Boy Scouts of America may call some or all of the following witnesses:

1. Linda Bergey … Plaintiff

2. James R. Bergey … Plaintiff

3. Kathy Stephanos
   507 South Main Street
   Berlin, MD 21811

   Ms. Stephanos was the Cavalcade crew leader and is expected to testify concerning the Cavalcade organization and participants in the accident in question.

4. Dr. Butch Barrett
   6 Harbor Mist Circle
   Berlin, MD 21811

   Dr. Barrett was a Cavalcade participant and one of the first individuals to render aid to Linda Bergey after the accident.

5. Betsy Bergey
   6213 Southpoint Road
   Berlin, MD 21811

   Ms. Bergey was an assistant crew leader on the Cavalcade and may be called to testify concerning her observations of the accident in question.

6. Steve Bergey
   10788 Bishopville Road
   Bishopville, MD 21813

   Steve is the son of Linda Bergey and he will be called to testify concerning his observations during the accident in question.

7. Ryan Bergey
   6213 Southpoint Road
   Berlin, MD 21811

   Ryan Bergey was a participant in the Cavalcade and may be called to testify concerning his observations of the accident in questions.

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

8. Dr. Gary Morsen
Telephone: 913-764-5200

Dr. Morsen was a participant in a different Cavalcade but was in the vicinity of the accident in question. Dr. Morsen was the first medical doctor to render care to Linda Bergey.

9. The following were employees of Philmont Scout Ranch and may have information concerning the accident in question:

a. Sara McGatha Shaddix – Head Horsewoman in charge of the Cavalcade. Ms. Shaddix will be called to testify concerning the instruction of the Cavalcade and the accident.

b. Eric Perry – wrangler. Mr. Perry may be called to testify concerning the use of Spinner as a pack animal and the accident in question.

c. Thomas Bush – wrangler. Mr. Bush may be called to testify concerning his observations concerning the accident in question. He was not a wrangler assigned to the Cavalcade but was assisting with the horses at the time of the accident.

d. Ben Scott – wrangler. Mr. Scott may be called to testify concerning the horses involved in the Cavalcade and his assistance with the horses.

e. Ben Vargas – Horse Foreman. Mr. Vargas has been the Horse Foreman at Philmont Scout Ranch for 33 years and has overall knowledge of the selection, training and use of horses at Philmont Scout Ranch. He was not present at the time of the accident, but was aware of the transfer of Spinner from a saddle horse to a pack animal.

f. Rod Taylor – cowboy. Mr. Taylor has been a cowboy with the Philmont Scout Ranch for approximately 25 years and has general knowledge and supervision responsibilities concerning the selection, hiring and training of horsemen and wranglers as well as direct responsibilities related to the horses maintained by Philmont Scout Ranch.

g. Robert Ricklefs – Ranch Manager. Mr. Ricklefs was not present at the time of the accident in question but has general knowledge of the operation of Philmont Scout Ranch and was involved in the post accident investigation of the accident involving Linda Bergey.

h. Keith Gallaway – General Manager. Mr. Gallaway is the general manager of Philmont Scout Ranch. He was not present and does not have personal knowledge of the accident in question, but is aware of the overall operation of Philmont Scout Ranch and was involved in the post-accident investigation involving the accident of Linda Bergey.

i. Mark S. Anderson – Director of Programs. Mr. Anderson is the overall director for the various types of programs operated by Philmont Scout Ranch. He has no personal knowledge of the accident in question but was involved in the investigation following the accident involving Linda Bergey.

List all documents which you believe, at this time, will be exhibits at the trial.

PLAINTIFFS' EXHIBITS *

Medical Records

1. Philmont EMS – Ambulance Report pertaining to transport of Linda Bergey from Philmont to I-25 South of Wagon Mound, New Mexico, dated July 7, 2002.

2. University of New Mexico Lifeguard (Helicopter Service) – records pertaining to transport of Linda Bergey to St. Vincent Hospital in Santa Fe, New Mexico, dated July 7, 2002.

3. St. Vincent Hospital Medical records on Linda Bergey, including emergency room and admission records, for July 7, 2002 through July 26, 2002.

4. Rocky Mountain EMS – Ambulance Report pertaining to transport of Linda Bergey from St. Vincent Hospital to the Santa Fe Airport dated July 26, 2002.

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

5. Med Flight Air Ambulance, Inc.'s records pertaining to transport of Lindy Bergey from Bryn Mawr Rehabilitation Hospital from July 26, 2002 through August 22, 2002.

6. Bryn Mawr Rehabilitation Hospital, Philadelphia, PA – records pertaining to medical and rehabilitation services provided to Linda Bergey from July 26, 2002 through August 22, 2002.

7. Chesapeake Rehabilitation Hospital records pertaining to Linda Bergey for services provided from August 22, 2002 through August 30, 2002.

8. Health South Chesapeake records pertaining to Linda Bergey for services rendered from September 3, 2002 through March 2, 2003 (included in the records from Chesapeake Rehabilitation Hospital, Item 7).

9. Glenwood Brooks, Jr., Ph.D. Neuropsychological Report pertaining to his testing and evaluation on Linda Bergey from August 28, 2002 through June 13, 2003.

10. McLean Fry & Associates, P.A. records pertaining to Linda Bergey for services provided on October 17, 2002, January 22, 2003, May 28, 2003, July 24, 2003, September 11, 2003, and April 25, 2004.

11. Peninsula Dermatology Associates record pertaining to Linda Bergey for services provided on October 25, 2002.

12. Lawrence Barrett, II, D.D.S. records pertaining to Linda Bergey for services rendered from November 19, 2003 through December 12, 2002.

13. Pampered Touch Massage Therapy records pertaining to Linda Bergey for services rendered from May 16, 2003 through November 13, 2003.

14. Drs. McLean Fry & Associates, P.A. records pertaining to Linda Bergey for services rendered from October 17, 2002 through March 25, 2004. (Records to be obtained.)

Medical Bills

NEW MEXICO PROVIDERS

15. Philmont EMS– Ambulance (Bill to be obtained), for services rendered on July 7, 2002..

16. University of New Mexico Lifeguard (Helicopter Service) Bill, MR Number 4473720, in the amount of $7,603.00 for services rendered on July 7, 2002.

17. St. Vincent Hospital Bill, Account Number 12041962-01, in the amount of $97,236.50 for services rendered from July 7, 2002 through July 26, 2002..

18. Northern New Mexico Emergency Medical Services Bill, Account Number saf8149824, in the amount of $644.00 for services rendered on July 7, 2002.

19. Craig F. Geron, M.D. Bill, Account Number 001000056292, in the amount of $169.00, for services rendered on July 19, 2002.

20. Erich Marchand, M.D., Neurosurgery New Mexico Bill, Account Number 4793, in the amount of $2,664.00 for services rendered from July 7, 2002 through July 26, 2002.

21. New Mexico Anesthesia Consultants, P.C. Bill, Account Number 67009960, in the amount of $1,170.00 for services rendered on July 7, 2002 and July 11, 2002.

22. Santa Fe Radiology, P.C. Bill, Account 101*12041962, in the amount of $3,189.00 for services rendered from July 7, 2002 through July 25, 2002.

23. David Hoverson, M.D., NNM Gastroenterology Associates Bill, Account Number 32237, in the amount of $715.00 for services rendered on July 13, 2002 and July 14, 2002.

24. Charles A. Riley, M.D. Bill, Account Number 5195, in the amount of $712.89 for services rendered from July 19, 2002 through July 26, 2002.

25. Bruce A. Shaffer, M.D. Bill, Account Number Bergey 0000, in the amount of $824.49 for services rendered from July 13, 2002 through July 14, 2002.

26. E. Dow Suhre, M.D. Bill, Account Number Bergey0000, in the amount of $1,250.00 for services rendered from July 7, 2002 through July 24, 2002.

27. Running Bear Rescue, Inc. a/k/a Rocky Mountain EMS Ambulance Bill, Account Number 220607406, in the amount of $453.43 for transport services from St. Vincent Hospital to Santa Fe Airport on July 26, 2002.

MARYLAND PROVIDERS

28. Med Flight Air Ambulance Bill, Account Number Bergey, L., in the amount of $19,000.00 for transport services to Bryn Mawr Rehabilitation Hospital on July 26, 2002.

29. Jefferson Health Ambulance Bill, Patient Number 220607406, in the amount of $577.90 for transport services from Chester County Airport to Bryn Mawr Rehab on July 26, 2002.

30. Bryn Mawr Rehabilitation Hospital Bill, in the amount of $71,350.25 for services rendered from July 26, 2002 through August 22, 2002.

31. MAML (Medical Associates of the Main Line) Bill, Account Number 39397, in the amount of $2,174.00 for services rendered from July 26, 2002 through August 21, 2002. (Bills from Drs. Horwich while at Bryn Mawr Rehabilitation Hospital.)

32. RAML (Rehabilitation Associates Main Line) Bill, in the amount of $1,772.00 for services rendered from July 26, 2002 through August 22, 2002. (Bills from David Long, M.D. while at Bryn Mawr Rehabilitation Hospital.)

33. ML Behavioral Health Affiliates Bill, Account Number 13008867, in the amount of $520.00 for services rendered from July 28, 2002 through August 14, 2002. (Bills from E. Murphy, Ph.D.'s Neuropsychological Testing while at Bryn Mawr Rehabilitation Hospital.)

34. Ability Rehabilitation Associates, P.A. Bill, Account Number 1097680, in the amount of $1,075.00 for services rendered from August 22, 2002 through August 30, 2002. (Bills for Gunnar W. Zorn, III, M.D. and Kristie Kim, M.D. while at Chesapeake Rehabilitation Hospital.)

35. Chesapeake Rehabilitation Hospital Bill, Medical Record Number220607406, in the amount of $11,353.43 for services rendered from August 22, 2002 through August 30, 2002.

36. Bird & Baumann, P.A. Bill, in the amount of $200.00 for services rendered on August 23, 2002.

37. Glenwood Brooks, Jr., Ph.D. Bill, Account Numbers 10021 and 10487, in the amount of $1,872.00 for services rendered from August 28, 2002 through June 13, 2003.

38. Peninsula Orthopedic Associates Bill, in the amount of $713.00 for services rendered from August 30, 2002 through January 28, 2004.

39. Health South Chesapeake Bill, Patient Number 504255, in the amount of $7,952.98 for services rendered from September 3, 2002 through March 2, 2003.

40. J. D. Bell, M.D., P.A. Bill, in the amount of $159.00 for services rendered on September 5, 2002.

41. Drs. McLean Fry & Associates, P.A. Bill, Patient Number 2057, in the amount of $145.00 for services rendered from October 17, 2002 through March 25, 2004.

42. Peninsula Dermatology Associates Bill, in the amount of $55.00 for services rendered on October 25, 2002.

43. Dr. Lawrence Barrett Bill, ID Number 522188229 9281, in the amount of $155.00 for services rendered on November 19, 2003.

44. Neighbor Care Home Med Equipment Bill, in the amount of $114.68, for August 30, 2002.

45. Paoli Memorial Hospital Bill, Account Number 12865184, in the amount of $611.00 for services rendered on August 8, 2002.

Other Exhibits

46. Certificate of Current Membership with Boy Scouts of America, Troop 0225, dated December, 2002, for Linda Bergey.

47. 2002 Health and Medical Record, Level A: Participants in all Backcountry Program (Meets BSA Class 3 Requirements) for Linda Bergey, dated June 3, 2002.

48. Title Search Documents for Boy Scouts of America, Philmont Scout Ranch, subsequent to January 1, 2000.

49. Notice of Value – Assessor's Copy for Boy Scouts of America, Cimarron, New Mexico as of 2003.

50. Literature entitled, "Guide to Safe Scouting, IX – Sports and Activities," 15 pages.

51. Literature entitled, "Guide to Safe Scouting, III – Camping, Trek Safely," 14 Pages (specifically Pages 4 to 6).

52. Diagrams, two (2) "Exhibit A", labeled "Corral" and two (2) "Exhibit B" labeled "Arena"prepared by James R. Bergey, Jr. (total of four (4).

53. Photograph of the participants in the subject Cavalcade.

54. Photographs, three (3) of Linda Bergey with the horse assigned to her prior to the subject incident.

55. Contemporary photographs of Linda Bergey since the incident.

56. Philmont 2002 Cavalcade Guidebook to Adventure booklet.

57. Anatomical drawings, photographs, or other demonstrative evidence of the injuries suffered by Linda Bergey.

58. Economic information and reports such as W-2 Wage and Tax Statements for Linda Bergey, economic consultation reports, computation and related matters on losses to Plaintiff's.

DEFENDANT, BOY SCOUTS OF AMERICA *

d/b/a PHILMONT SCOUT RANCH BSA'S EXHIBITS

Defendant Boy Scouts of America may introduce the following exhibits:

1. Photographs of the arena and general area of where the accident in question occurred.

2. Documentation related to the Cavalcade Program and Philmont Scout Ranch.

3. Application Records for the Cavalcade in question, including the medical application of Linda Bergey.

4. Records related to the training programs utilized at Philmont Scout Ranch.

PLAINTIFFS' EXPERT WITNESSES *

Plaintiffs anticipate calling the following Expert Witnesses:

1. Hugh Ley
P.O. Box 12
Terrero, NM 87573

Testimony regarding his training, knowledge and experiences of horses; the behavior of horses, including, but not limited to, training requirements of horse handling individuals in a setting such as in the subject matter; opinions as to the duties of individuals guiding a group in a Cavalcade such as the subject one.

2. M. Brian McDonald, Ph.D.
4219 Coe Drive NE
Albuquerque, NM 87110

Testimony regarding the loss of Plaintiff, Linda Bergey's life expectancy due to head injuries and benefits reasonably expected from her continued life and her probable life expectancy constitute loss and damages; her past and future medical and psychological damages; past and future loss of household services; loss of income and expected loss of future earning capacity; loss of enjoyment of life and future loss of enjoyment of life; Plaintiff, James R. Bergey, Sr.'s loss of consortium

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

3. ***Neuropsychologist –to be determined:**

Linda Bergey has been examined by two neuropsychologists:

Edwin Murphy, Ph. D.
P.O. Box 8500-52198
Philadelphia, PA 10178-2198
610 648-1442

Glenwood Brooks, Jr. Ph.D.
220 Tilghman Road
Salisbury, MD 21804
410 546-4600

Either one may be called or, in the alternative, a New Mexico neuropsychologist may be called. Timely notification will be given the Defendant. Testimony to include the evaluation of the trauma to the brain, and the actual results of the injury and the level of neurological injury, which includes, neuropsychological testing to establish a causal connection for Linda Bergey's traumatic brain injury, the level of sensation lost; the extent of motor function damage, the physical impairment resulting from head injury and the percentage of physical impairment resulting therefrom; level of assistance needed by Ms. Bergey in activities of daily living, past and/or future, need for attendant health care, past or future, level of attendant care needed, past or future and cost of attendant health care; the need for training Plaintiff in new modes of function to replace lost functions, past and future; psychosocial changes (covering areas such as increased aggressiveness, irritability, mood disordered, becoming anxious, poor impulse control problems, depression over injuries and impairment, bad temper and mood swings); impaired cognitive changes (covering areas such as perception, memory, thinking and difficulty in successfully relating to people); neuropsychological expenses, past and future; need for annual checkup and evaluation at a recognized head injury center and the cost of the annual checkups; need for psychological counseling, Plaintiff, family, past and future; whether Ms. Bergey will be able to work at a job for any length of time to earn money and the amount of hours per day/week; the life expectancy of Ms. Bergey due to her head injuries; and possibility in developing technology to aid Plaintiff related to her head injuries and cost associated with developing technology.

4. ***Orthopaedist:**

One of her treating Orthopaedists will be called whether named in the witness list for treatment here in New Mexico or in Maryland. Testimony to include the level of orthopaedic injury sustained by Ms. Bergey, the level of voluntary function of the muscles which has been lost and will be lost in the future; the physical impairment from orthopaedic problems resulting from head injury and the percentage of physical impairment resulting therefrom; description of Ms. Bergey's disfigurement and the percentage of disfigurement; the level of assistance needed by Plaintiff in activities of daily living, past and future; the need and cost for attendant health care, past and future; need for future medical expenses past and future; need for home environmental modifications in the future; cost for needed home environmental modifications; need for medical, hospitalization and rehabilitation, past and future; need for physical therapy, past and future; need for occupational therapy, past and future; the need for training Ms. Bergey in new modes of function to replace lost function, past and future; whether Ms. Bergey will be able to work at any job for any length of time to earn money and the amount of hours per day/week; and, possibility in developing technology to aid Plaintiff in orthopaedic difficulties and cost associated with developing technology.

5. ***Speech and Language Therapist**

One of her treating speech therapists named in the providers lists. Testimony to include the level of speech and language deficit Ms. Bergey has experienced resulting from her head injury and the percentage of impairment resulting therefrom; Need for speech therapy, past and future; problems arising from swallowing difficulties, past and future; costs for testing/monitoring related to swallowing difficulties, past and future; possibility in developing technology to aid Plaintiff in swallowing difficulties and cost associated with developing technology.

6. ***Expert Medical Doctor**

Testimony to include review of her medical treatment from history and diagnosis through Ms. Bergen's treatment and prognosis. The expert ultimately selected will be either one of the treating physicians. This testimony would also go to establishment of the causal connection of the injuries to the fact of the horse falling on her during the subject incident.

Plaintiffs have not yet determined what other experts will be called at trial but as others become known through discovery, Plaintiffs will timely advise the court and counsel on this matter.

DEFENDANT, BOY SCOUTS OF AMERICA *
d/b/a PHILMONT SCOUT RANCH BSA'S EXPERT WITNESSES

Defendant Boy Scouts of America may call the following expert witnesses:

Unknown at this time.

OTHER PRETRIAL MOTIONS *

Plaintiffs intends to file:

Motion to Amend Complaint to include a claim under the doctrine of bystander recovery; Motion to Compel as may be necessary or appropriate; Motions in Limine as necessary following discovery. Plaintiff may file a Motion to Amend the Complaint as discovery progresses.

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

Defendant, Boy Scouts of America d/b/a/ Philmont Scout Ranch BSA intends to file:

Motion for Summary Judgment, pursuant to the New Mexico Equine Liability Act.

Pretrial motions, other than discovery motions, shall be filed with the Court and served on opposing party by **February 15, 2006**; the response shall be filed with the Court and served on opposing party by **March 1, 2006**; the Notice of Completion and reply, if any, shall be filed with the Court and served on opposing party by **March 15, 2006**. Any pretrial motions, other than discovery motions, filed after the above dates shall be considered untimely in the discretion of the Court.

***COUNSEL: Please note new Pre-trial Order Deadlines.**

PRETRIAL ORDER *

Counsel are directed to file a consolidated final Pretrial Order as follows: Plaintiff to Defendant on or before 6-27-06. Defendant to Court on or before 7-12-06.

Proposed jury instructions shall be filed no later than __*________.

PRETRIAL CONFERENCE AND TRIAL SETTING

This matter is set for a Pretrial Conference on 7-5-06 at 9:00 a.m.

Calendar Call is set for 8-3-06 at 9:00 a.m.

This matter is set for a JURY TRIAL on a trailing calendar beginning on 8-8-06, at 9:00 a.m.

ESTIMATED TRIAL TIME

The parties estimate trial will require two-weeks but may be less depending on a consolidation of testimony regarding the witnesses and the stipulations on the admissibility of medical evidence records and authenticity of other related evidence.

______ This is a non-jury case.

* Please refer to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

__X__ This is a jury case.

SETTLEMENT

The possibility of settlement in this case is considered: **unknown**.

The parties request a settlement conference with a mediator jointly selected by them.

OTHER MATTERS*

Counsel are directed that the Pretrial Order will provide that no witnesses except rebuttal witnesses whose testimony cannot be anticipated, will be permitted to testify unless the name of the witness is furnished to the Court and opposing counsel no later than thirty (30) days prior to the time set for trial. Any exceptions thereto must be upon order of the Court for good cause shown.

If documents are attached as exhibits to motions, affidavits or briefs, those parts of the exhibits that counsel want to bring to the attention of the Court must be highlighted in accordance with D.N.M.LR-Civ. 10.6.

EXCEPTIONS

(Where counsel cannot agree to any recitation herein, exceptions shall be listed.)

APPROVED WITH/WITHOUT EXCEPTIONS
(note exceptions above)

PATRICK A. CASEY, P.A.
For Plaintiffs:

By: Approved by telephone August 18, 2005
Patrick A. Casey, Esq.
P.O. Box 2436
Santa Fe, NM 87504-2436
(505) 982-3639
(505) 989-9181 (Fax)

* **Please refer** to the attachments entitled "PREPARATION FOR CIVIL TRIAL BEFORE THE HONORABLE M. CHRISTINA ARMIJO" and adhere to the instructions set forth therein.

BUTT, THORNTON & BAEHR, P.C.
For Defendant Boy Scouts of America
d/b/a Philmont Scout Ranch BSA

By: ______________________
Alfred L. Green, Jr.
P.O. Box 3170
Albuquerque, NM 87190-3170
(505) 884-0777
(505) 889-8870 (Fax)

APPROVED:

____
United States Magistrate Judge

APPROVED AND ADOPTED AS
THE ORDER OF THE COURT:

____
United States District Judge